

Second, the State argues that the Motion is not timely under FRAP 29. However, as Aland stated in the Motion, also relying on *Northern Arapahoe*, FRAP 29 does not apply in this Court; it only provides useful guidance. More important, the State’s assertions that “the Court has the merits under advisement” so that “allowing Aland to participate as an amicus thus will unnecessarily delay a final decision” apparently ignore Defendants’ right to file a Reply to the State’s Response to Defendants’ motion to strike or alternatively file a sur-reply or schedule oral

argument. Doc. 19. Even if Defendants do not file a Reply, the State’s Response was filed on October 10, 2023, only five weeks ago, which means that the case still is at an “early stage” as stated in Aland’s Motion. Doc. 20 at 4.

Third, referring to 16 U.S.C § 1533(b)(6)(A) and 16 U.S.C § 1533(b)(3)(B), the State asserts that Aland “does not explain how the State’s interpretation of a different statutory provision in a case with different underlying facts that was litigated fifteen years ago in a different judicial district is legally relevant here” and, therefore, “Aland’s proposed amicus brief will be of no help to the Court.” Doc. 21 at 3-4. To characterize that argument as weak is an overstatement. The reasons are explained in Aland’s Motion. Doc. 20 at 2-3.

Both statutes are in the same section and subsection of the Endangered Species; they deal with opposite sides of the same coin (listing and delisting); and the language, in pertinent part, is the same as stated in Aland’s Motion (emphasis added):

16 U.S.C § 1533(b)(6)(A)	16 U.S.C § 1533(b)(3)(B)
“Within the <i>one-year period</i> beginning on the date on which general notice is published . . . regarding a proposed regulation, the Secretary <i>shall publish in the Federal Register</i> (i) if a determination as to whether a species is an endangered species or a threatened species . . . is involved, either (I) a final regulation to <i>implement such determination</i>”	“Within <i>12 months</i> after receiving a petition that is found . . . to present substantial information indicating that the petitioned action may be warranted, the Secretary <i>shall</i> make one of the following findings: (ii)The petitioned action is warranted, in which case the Secretary <i>shall promptly publish in the Federal Register</i> a general notice and the complete text of a proposed regulation to <i>implement such action</i>”

The most important factor is whether the Amicus Brief proffered by Aland will *assist the Court* in reaching a decision in this case. Undoubtedly, for the multiple reasons discussed in Aland’s Motion, the Amicus Brief will assist the Court by allowing it to consider opposing interpretations by one party of the same statutory language.

Respectfully submitted,



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November 17, 2023

Certificate of Service

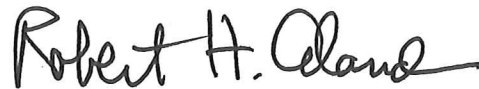
Plaintiff certifies that on November 17, 2023, he filed the foregoing Reply by sending it via United Parcel Service, for delivery on Monday, November 20, 2023, to the Clerk of the Court at the following address:

Clerk of the Court
United States District Court
2120 Capitol Avenue
Room 2131
Cheyenne, WY 82001-3658

Plaintiff also certifies that on November 17, 2023, by previous agreement, he served the Reply by email on the following counsel of record for the parties:

Jay A. Jerde, Counsel for the State of Wyoming; and

Coby Howell, Counsel for Defendants.



Robert H. Aland